

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	8:04CR504
Plaintiff,)	
)	
vs.)	REPORT AND
)	
DEREK K. HECK,)	RECOMMENDATION
)	
Defendant.)	

On February 8, 2005, defendant Derek K. Heck (Heck), together with his counsel, Assistant Federal Public Defender Jeffrey L. Thomas, appeared before the undersigned magistrate judge. Heck was advised of the charges, the penalties and the right to appear before a United States District Judge. After orally consenting to proceed before a magistrate judge, Heck entered a plea of guilty to Count I of the Indictment.

After being sworn, Heck was orally examined by the undersigned magistrate judge in open court as required by Federal Rule of Criminal Procedure 11. Heck also was given the advice required by that Rule. Finally, Heck was given a full opportunity to address the court and ask questions.

Counsel for the government and counsel for Heck were given the opportunity to suggest additional questions by the court. Moreover, both counsel orally certified that they were of the opinion that the plea was knowing, intelligent and voluntary, and that there was a factual basis for Heck's plea of guilty to Count I of the Indictment.

Therefore, I find and conclude that: (1) the plea of Guilty to Count I of the Indictment is knowing, intelligent, and voluntary; (2) there is a factual basis for the plea; (3) the provisions of Rule 11 and any other provisions of the law governing the submission of guilty pleas have been complied with; (4) a petition to enter a plea of guilty was completed by Heck, Heck's counsel and counsel for the government, and such petition accompanied Heck's plea and was placed in the court file; (5) the plea agreement is in writing and is filed in the court file; (6) there are no agreements or stipulations other than those contained in the written plea agreement.

IT IS RECOMMENDED TO SENIOR JUDGE THOMAS M. SHANAHAN that:

1. He accept the guilty plea and find the defendant, Derek K. Heck, guilty of the crime set forth in Count I of the Indictment to which Heck tendered a guilty plea;
2. He accept the written plea agreement attached to the petition to enter a plea of guilty with the understanding that the court is not bound by the stipulation, but may with the aid of the presentence report, determine the facts relevant to sentencing.

ADMONITION

Pursuant to NECrimR 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 8th day of February, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge